

PM2.5 Project-Level Conformity and Hot-Spot Analyses Frequently Asked Questions

1. When does PM2.5 project-level conformity apply for FHWA projects in PM2.5 nonattainment and maintenance areas?

A project-level conformity determination will be required prior to the first action to adopt, accept, approve, or fund a non-exempt phase of a FHWA project in a PM2.5 nonattainment or maintenance area on or after April 5, 2006.

2. How does PM2.5 project-level conformity apply for different types of projects?

Exempt projects. Exempt projects are those listed in 40 CFR 93.126 and traffic signal synchronization projects under 40 CFR 93.128. These projects are exempt from project-level conformity, and PM2.5 project-level conformity determinations are not required.

Projects of local air quality concern. Projects of air quality concern are those types of projects that are listed in 40 CFR 93.123(b)(1). PM2.5 project-level conformity determinations that meet all applicable criteria (see 40 CFR 93.109) are required for these types of projects, and they must include a hot-spot analysis.

Nonexempt projects that are not of local air quality concern. This would include projects that are not of the type listed in 40 CFR 93.123(b)(1), but are also not exempt. PM2.5 project-level conformity determinations that meet all applicable criteria (see 40 CFR 93.109) are required for these types of projects, but they do not have to include a hot-spot analysis. The project-level conformity determination should document that the project is not of the type identified in 40 CFR 93.123(b)(1), and EPA has determined that such projects meet the Clean Air Act's requirements without any further hot-spot analysis.

3. At what phase in project development and how often must project-level conformity be determined for PM2.5 areas?

FHWA must make a project-level conformity determination prior to its first action to adopt, accept, approve or fund a non-exempt phase of a project that occurs on or after April 5, 2006. In most cases project-level conformity determinations are made as part of the NEPA process, and must be completed prior to adoption of the CE, FONSI, or ROD. Conformity must be redetermined only if one of the following occurs: a significant change in the project's design concept and scope; three years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes (40 CFR 93.104(d)). Major steps include: NEPA process completion, start of final design, acquisition of a significant portion of the right-of-way, and construction (including Federal approval of plans, specifications, and estimates.)

4. When should PM2.5 project-level conformity be determined for projects that are already under development?

If the project still requires a FHWA approval or authorization, a project-level conformity determination will be required prior to the first such action on or after April 5, 2006, even if the project has already completed the NEPA process, or for multi-phase projects, even if other phases of the project have already been constructed. After project-level conformity is determined for a project, a new conformity determination is only required under the scenarios discussed in 40 CFR 93.104(d). If no new FHWA approval or authorization is required for a project on or after April 5, 2006, then project-level conformity will not be required.

5. How should PM2.5 project-level conformity be determined for multi-phase projects that are already under construction?

If any phase of the project still requires a FHWA approval or authorization, a project-level conformity determination will be required prior to the first such action on or after April 5, 2006. In this case, the required PM2.5 hot-spot analysis should focus on those portions of the project area that are not already under construction or are not completed and require a new FHWA approval or authorization.

6. For a PM2.5 project-level conformity determination that is not being made as part of the initial NEPA process for a project, how should the conformity determination be documented?

The project-level conformity documentation prepared by the project sponsor and the project-level conformity determination made by the FHWA Division Office can be documented in a format that is consistent with other documents in the project files or Administrative Record. When appropriate, it is recommended that this project-level conformity determination be made in conjunction with the re-evaluation required under 23 CFR 771.129.

7. For a PM2.5 project-level conformity determination that is not being made as part of the initial NEPA process for a project, how should the public involvement requirement of 40 CFR 93.105(e) be met?

Section 93.105(e) of the conformity regulations state that agencies shall “provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.” However, the regulations do not contain specific requirements for the length of the public comment period. Consideration should be given to the scale and scope of the analysis supporting the project-level conformity determination when determining the length of the public comment period.

Project sponsors must provide the opportunity for public review and comment of project-level conformity analyses for projects of air quality concern. The project sponsor should consult with the interagency partners to determine the extent of public involvement

necessary to meet 40 CFR 93.105(e). For projects that are not of air quality concern, a comment period is only required for project-level conformity determinations if such a comment period would have been required under NEPA.

8. As an option in advance of a project-level conformity determination that is not being made as part of the initial NEPA process for a project, if a list of projects that are not of air quality concern is made available for public review and comment, does this satisfy the public involvement requirements for later project-level conformity determinations?

Yes. A list of projects that have been discussed through interagency consultation as not being of air quality concern could be made available to the public and meet the requirements of public involvement for project level conformity. If this option is selected, the projects would need to be specifically described and a short explanation of why the projects are not of air quality concern may be needed, as appropriate to allow for sufficient public comment. Interagency consultation should be used to determine the level of detail and the extent of public involvement necessary to meet 40 CFR 93.105(e) for the list of projects.

9. How must the MPO be involved in interagency consultation for project-level conformity determinations?

Under 40 CFR 93.105, MPOs must be involved in the establishment of interagency consultation procedures for project-level conformity determinations. However, the extent of MPO involvement in any specific project-level determination is not defined by the transportation conformity regulation. Interagency consultation should be used to discuss the role of the MPO in project-level conformity determinations. In addition, MPO data may be valuable in hot-spot analyses, especially regarding regional transportation and traffic conditions and emissions.

10. Are the examples in the preamble to the March 10, 2006 rule (71 FR 12491) the only projects that are of air quality concern or can other cases apply?

The examples in the preamble are not exclusive and are not intended to cover all cases. If a particular project does not fit any of the examples, interagency consultation should be used to determine if the project is of air quality concern as defined in 40 CFR 93.123(b)(1).

11. What percentage of total trucks should be considered diesel trucks? Can total trucks be used instead?

As discussed in the preamble to the March 10, 2005 rule (71 FR 12491), PM_{2.5} and PM₁₀ hot-spot analyses are targeted to projects that involve a significant number of or a significant increase in diesel vehicles. In areas where truck volume data may not easily be disaggregated, total truck volumes could be used. Interagency consultation should be used to discuss data and the appropriate way to categorize diesel vehicles.

12. For the example of 125,000 AADT and 8% diesel trucks, is this the existing levels, the open-to-traffic levels, or the design year levels?

The example could apply to any of these scenarios. In some cases, there may be existing violations which must not be worsened, so the existing traffic levels may be applicable. As discussed in the preamble to the July 1, 2004 rule (69 FR 40057), the hot-spot analysis should examine the year(s) during the time frame of the plan in which project emissions, in addition to background regional emissions in the project area, are expected to be the highest. In some cases, this may be when the project opens to traffic, but in other cases may be the design year or another year where peak emissions are anticipated.

13. One of the examples of a “project of air quality concern” from the preamble to the March 10, 2006 rule (71 FR 12491) is “a project on a new highway or expressway that serves a significant volume of diesel truck traffic, such as facilities with greater than 125,000 annual average daily traffic (AADT) and 8% or more of such AADT is diesel truck traffic.” This amounts to a truck AADT of 10,000. Could a project on a new highway that has a truck AADT of 10,000 also be an example of a “project of air quality concern,” regardless of the total AADT or percentage of diesel trucks?

Yes. A project that has a truck AADT of 10,000 would also be an example of a “project of air quality concern.” For example, a project may have a diesel truck percentage less than 8%, but the over AADT is higher than 125,000, resulting in over 10,000 diesel truck AADT. Also, a project may have an AADT less than 125,000, but a truck percentage over 8%, resulting in over 10,000 diesel truck AADT. It is important to note that the examples were included in the preamble to the March 10, 2006 final rule to illustrate a typical project of air quality concern. The numbers included in the examples should not be interpreted as required thresholds.

14. Would any nonexempt project on a facility with 125,000 AADT and 8% diesel trucks be a “project of air quality concern,” or would only a project that significantly increased the number of diesel vehicles on such a facility be a “project of air quality concern?”

As discussed in the examples in the preamble to the March 10, 2006 rule (71 FR 12491), 40 CFR 93.123(b)(1)(i) should be interpreted as applying only to projects that would involve a significant increase in the number of diesel transit busses and diesel trucks on an existing highway facility. The example of 125,000 AADT and 8% diesel trucks is intended for new facilities, not as an example of a “significant increase.” This is consistent with 93.123(b)(1)(iv) which defines projects of air quality concern based on a significant increase the number of diesel vehicles due to terminal or transfer project expansion. A “significant increase” in the number of diesel transit busses and diesel trucks under either 40 CFR 93.123(b)(1)(ii) or (iv) would need to be determined through interagency consultation.